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PACIFIC  TELESIS
Group - Washington

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 26, 1993

Donna R. Searcy
Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Ms Searcy:

Re: RM-8181 *Petition of the Inmate Calling Services Providers Task Force for
Declaratory Ruling*

On behalf of Pacific Bell and Nevada Bell, please find enclosed an original and six copies of their "Reply Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Celia Nogales/WFA

Enclosures

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MAR 26 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of the Petition)
of the Inmate Calling)
Services Providers Task Force)
for Declaratory Ruling) RM-8181

REPLY COMMENTS OF PACIFIC BELL AND NEVADA BELL

Pacific Bell and Nevada Bell (the "Pacific Companies") hereby file their reply comments in the above-captioned proceeding. The Petition for Declaratory Ruling, filed by the Inmate Calling Services Providers Task Force of the American Public Communications Council ("APCC"), seeks a ruling (1) excluding inmate public telephones from the Part 68 exemption for public telephones and (2) classifying as "enhanced" the functionality provided by local exchange carriers ("LECs") to correctional facilities in connection with those telephones.

Ameritech, BellSouth, Nynex, SNET, SWBT and U.S. West¹ (the "BOCs") join the Pacific Companies in opposing APCC's Petition. Advanced Technologies and Capital Network² support the Petition. MCI³ supports the

¹Ameritech Operating Companies (Ameritech); BellSouth Telecommunications, Inc. (BellSouth); Nynex Telephone Companies (Nynex); Southern New England Telephone Company (SNET); Southwestern Bell Telephone Company (SWBT); and U.S.

Petition to the extent APCC seeks to have inmate public telephones excluded from the Part 68 exemption. MCI opposes the Petition to the extent APCC seeks to have the functionality provided by the telephones declared "enhanced services."

The Pacific Companies support MCI's comments that the "services" APCC claims the LECs offer over their telephones are, in fact, merely functions or features of the telephones and/or CPE located at the correctional facility.⁴ Since these functions or features are not offered over the network, they cannot be called services, let alone "enhanced" services. Further, even if the Pacific Companies were to offer enhanced services over their inmate public telephones,⁵ that fact alone would not support reclassification of those telephones as CPE.

APCC, Advanced Technologies and Capital Network (collectively "APCC Members") rely on flawed reasoning to support their allegation that the LECs cross-subsidize their inmate public telephones with revenues from their regulated services. Of course, this claim is based on their fallacious assumption that inmate public telephones are not regulated.⁶ APCC Members maintain that this alleged

⁴MCI Comments at pages 3-4.

⁵Subject, of course, to Part 64 accounting safeguards.

⁶This argument also is based on the fundamental and erroneous assumption that the classification of a service as

cross-subsidy allows the local exchange carriers to pay "significantly" higher commissions⁷ to correctional facilities. APCC claims that this puts ratepayers at a disadvantage.⁸ APCC Members also claim that this puts them at a competitive disadvantage.⁹

Since inmate public telephones are regulated, no unlawful cross-subsidy can occur.¹⁰ As a matter of fact, the Pacific Companies do not cross-subsidize their inmate public telephones with revenues from any of their other regulated services.¹¹ Further, since the revenues from the Pacific Companies' inmate public telephones¹² exceed their

"regulated" automatically means that it is subsidized. As a general rule, state regulatory commissions carefully target in the applicable rate design those regulated services which will be subsidized. In California and Nevada, inmate public telephones have not been targeted for any cross-subsidy.

⁷APCC Petition at page 17.

⁸Id.

⁹Advanced Technologies Petition at pages 1-2; APCC Petition at pages 17-18; and Capital Network Petition at pages 1-2.

¹⁰MCI implies that the dependency of inmate public telephones on central office-based equipment is somehow relevant to whether or not the LECs are actually cross-subsidizing those telephones with regulated revenues. MCI Comments at page 2. However, there is no logical connection between the two.

¹¹Even if the Pacific Companies were cross-subsidizing one regulated service with another, they would not be in violation of any Commission rules.

¹²These consist, primarily, of operator collect and MTS charges.

costs to provide those telephones, there is no cross subsidization.

The Pacific Companies agree with the BOCs' comments that APCC's argument for deregulation of inmate public telephones is essentially flawed. APCC relies, in large part, on a basic misunderstanding of the Part 68 exemption compounded by APCC's erroneous interpretation of Tonka¹³ as support for its arguments that (1) inmates are not members of the general public and (2) public telephones with specialized functionality are not encompassed by the Part 68 exemption.

As the Pacific Companies and the BOCs, variously, noted in their comments, the logical application of Tonka to inmate public telephones is as follows:

1. Inmates are a transient segment of the general public. The Part 68 exemption encompasses public telephones available to the general public or "a segment thereof."¹⁴ Inmates, too, require access to public telephones. The fact that they are subject to controlled conditions only increases their need for access to public telephones.

2. For purposes of distinguishing between regulated public telephones and CPE, the correct question is whether, from the end user's standpoint, the telephone

¹³In re Tonka Tools, Inc. and Southern Merchandise Corp.,
58 Rad.Reg.(P&F)2d 903 (1985).

¹⁴58 Rad.Reg.(P&F)2d at 910.

set is logically severable from the underlying telephone service.¹⁵ With regard to inmates, the answer is clear: inmates do not have the ability to control the selection of the telephone set to be connected to the underlying telephone service. There is no doubt that inmate public telephones are covered by the Part 68 exemption.

¹⁵"Regardless of the method of payment or operational characteristics of these newer devices, they have not changed in one important respect; the equipment and transmission capacity are not logically severable ... the primary customer of this pay telephone equipment for Computer II regulatory purposes is still the general public or some segment thereof ... The instrument and the pay telephone service are not

APCC Members have not offered any evidence of any alleged cross-subsidy or competitive harm. The Pacific Companies believe that to continue this proceeding would be a waste of all parties' resources. Therefore, the Pacific Companies respectfully request that the Commission deny APCC's Petition.

Respectfully submitted,

PACIFIC BELL
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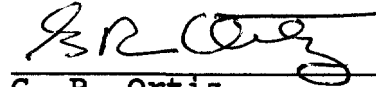
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Their Attorneys

Date: March 26, 1993

CERTIFICATE OF SERVICE

I, Guadalupe Ramon Ortiz, hereby certify that a copy of the foregoing "Reply Comments of Pacific Bell and Nevada Bell," was served by United States first-class mail, postage prepaid, to the parties listed in the attached service list this 26th day of March, 1993.



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